HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 12406 OF 2005

DATED: 07.07.2006

Between:

M.Suresh Kumar

… Petitioner

and

Tirupati Urban Development Authority
Rep.by its Vice Chairman, Tirupati
And another.

…Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.12406 OF 2005

ORAL ORDER:

The petitioner claims to be the owner and in possession of property to an extent of 0.14 cents in Survey No.57/3, Tirupati Town, Chittoor District. He wanted to develop the property by constructing a residential complex. In furtherance of the intention, he approached the second respondent for permission to construct a residential complex consisting of ground + five floors along with an application for permission. The petitioner claims to have complied with all statutory requirements including payment of permit fee. After receiving the application, the second respondent informed the petitioner that it has power to sanction only ground plus three floors and that the first respondent is the authority to sanction additional floors. At the petitioner's instance, the second respondent forwarded the petitioner's application to the first respondent for grant of sanction. Thereafter, the first respondent issued a communication on 22.09.2004 stating that there was a discrepancy in the site area as per the documents submitted by the petitioner and that the ownership of the land also needs to be verified.

Thereafter, the petitioner made a representation to the second respondent on 16.10.2004 enclosing the link documents of

the property and clarifying that there was no discrepancy between the land on the ground and as per the document and reiterating the request for grant of permission.

It is the petitioner's case that the engineering wing of the second respondent had also inspected the site and was satisfied. Thereafter, there ensued a series correspondence between the respondents 1 and 2 with regard to the title of the petitioner to the property and various sundry details. Eventually, the first respondent addressed a letter to the petitioner bearing reference BA No.G2400/2004 dated 17.12.2004 stating that the proposals for construction by the petitioner had been forwarded to the first respondent and having been examined permission is declined for the reasons recorded therein. The first of the reasons recorded by the first respondent for declining permission is that the said respondent wanted the details of the order of this Court in W.P.No.28785 of 1995 and 28862 of 1995 in respect of the property in question and the second reason is that Sri Swami Hathiramji Mutt, Tirupathi had claimed in a public notice that the land belonged to the Mutt and had requested that no permission for any construction be granted.

Assailing the order of the first respondent rejecting the application for grant of permission for construction of apartment in question, the writ petition is filed.

The first respondent has filed a counter affidavit on 22.12.2005. To the extent relevant and material to the core lis in this case, the counter affidavit admits that the second respondent had submitted a legal opinion of the standing counsel for the second respondent that there was no prohibitory order against the Tirupati Municipality restraining from permitting it to construct the

superstructures as per the orders in W.P.No.28785 of 1995 and 28862 of 1995 dated 24.06.1997. The first respondent further states that the site under reference is in Survey No.57/3 of Tirupati a property which is covered by Sri Swamy Hathiramji Mutt's Public Notice dated 28.11.2001, published in the Eenadu daily dated 29.11.2001 claiming ownership. Further the custodian, Sri Swamy Hathiramiji Mutt, Tirupati vide letter inRoc.No.B41595/2004, dated 15.10.2004 is stated to have informed that the proposed site (S.No.57/3) belongs to Sri Swamy Hathiramji Mutt and requested not to approve any layout/building plan in the said site. As the custodian, Sri Swamy Hathiramji Mutt has raised objection, over the property, the petitioner has no right to get sanction for any construction in the said property vide B.A.No.400/G2/2004, dated 17.12.2004 and the same was communicated to the petitioner and the 2nd respondent.

On the basis of the rival pleadings, it appears that the first respondent assumed that it could decide and determine the validity of any objection raised by any person or authority as to the title of an applicant for grant of building permission. If that be so, the first respondent is required to expeditiously decide the title dispute to the best of his ability. The 1st respondent cannot merely entertain an objection and postpone a decision thereon till eternity. Sri Swamy Hathiramji Mutt is an organization. As such it may have objected to the grant of any building permission to the petitioner by the first respondent. In such an event the first respondent was obligated in law to have called upon the Mutt to produce documents or other instruments in support of its assertion that the property belongs to the Mutt. If the first respondent was satisfied that the petitioner had no title to the property the first respondent

should have informed the petitioner that no permission could be granted for that reason. Some vague and unfortified objections by Sri Swamy Hathiramji Mutt or any individual however cannot freeze the jurisdiction of the first respondent which is a body required to exercise jurisdiction in appropriate cases. The first respondent is a statutory authority which cannot escape the obligation of taking a decision. If the first respondent was satisfied as to the prima facie title of the petitioner and if the application of the petitioner was otherwise technically entitled to grant of permission the first respondent should have granted the permission and left the rival claims of the property to be pursued before the civil Court of competent jurisdiction or any other competent adjudicating authority. The first respondent is not an adjudicator of property disputes. It is at best a regulator of town planning and aesthetics and that is where its role begins and ends too. Satisfaction as to title is a very marginal issue which could be addressed by the first respondent and only prima facie.

On the aforesaid analysis, the first respondent is directed to communicate to the petitioner within 7 days from the date of receipt of a copy of this order as to whether in the considered and reasoned opinion of the first respondent, the petitioner lacks title to the property in question and if so the reasons therefore. If the first respondent is however, satisfied that the title asserted by the petitioner to the property in respect of which the application for apartment permission has made, is not in doubt the first respondent shall sanction the permission if it is otherwise technically permissible. The first respondent shall not however postpone the decision making process.

As the communication dated 17.12.2004 has avoided the

rational decision making obligation of the first respondent and constitutes abdication the first respondent's responsibility in this regard, to an unfortified complaint by Sri Swamy Hathiramji Mutt, this court considers it appropriate to allow the writ petition as above with costs of Rs.2500/- payable by the first respondent to the petitioner within a period of two months from the date of receipt of a copy of this order.

GODA RAGHURAM, J

Date: 07.07.2006
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